

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VOLKSWAGEN GROUP OF AMERICA, INC.,	:	
	:	19 Civ. 5202 (PAE)
Plaintiff,	:	
	:	<u>ORDER</u>
-v-	:	
	:	
THOMAS JOSEPH KOVARCIK SMITH,	:	
	:	
Defendant.	:	
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PAUL A. ENGELMAYER, District Judge:

This case arises out of a dispute between plaintiff and counterclaim defendant Volkswagen Group of America, Inc. (“VWGoA”) and its former lawyer—defendant and counterclaim plaintiff Thomas Joseph Kovarcik Smith—centering around VWGoA’s 2015 decision to cease pursuing refunds or reductions of duties from U.S. Customs and Border Protection (“CBP”). On October 11, 2019, the Court held an initial pretrial conference, at which it became clear that a key issue in the case would be CBP’s communications with Smith about the availability of refunds for pending and future claims. Accordingly, the Court directed the parties to meet and confer immediately to submit a joint request for information (the “*Touhy* request”) to CBP.

On January 27, 2020, three and a half months after the initial conference, the Court received a letter from Smith requesting the Court’s assistance in resolving the parties’ disputes as to the content of the *Touhy* request. Dkt. 34. Smith’s letter attached a “second proposed draft” joint *Touhy* request, Dkt. 34-1, which apparently had been rejected by VWGoA. Under the

Court's Individual Rule 2(C), VWGoA had three business days thereafter to respond. VWGoA elected not to do so.

While the Court would be within its discretion to treat any opposition VWGoA had to the draft joint *Touhy* request as waived, Smith's letter does not provide enough information for the Court to make informed rulings as to several of the disputed issues.<sup>1</sup> Accordingly, the Court orders VWGoA to respond to Smith's letter by 2 p.m. tomorrow, February 6, 2020.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: February 5, 2020  
New York, New York

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<sup>1</sup> For example, Smith lists “the definitions used in the letter [to CBP]” as an area of dispute but does not appear to have provided the Court with any list of definitions.